

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Promoting Efficient Use of Spectrum)	WT Docket No. 00-230
Through Elimination of Barriers to the)	
Development of Secondary Markets)	
_____)	

**COMMENTS OF
BELLSOUTH CORPORATION
AND BELLSOUTH WIRELESS CABLE, INC.**

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To: The Commission

**COMMENTS OF
BELLSOUTH CORPORATION
AND BELLSOUTH WIRELESS CABLE, INC.**

BellSouth Corporation and its wholly-owned subsidiary BellSouth Wireless Cable, Inc. (“BellSouth”) hereby comment on several proposals set forth in the *Report and Order and Further Notice of Proposed Rulemaking* in this proceeding.¹ For the reasons set forth below, the Commission should: 1) extend the spectrum leasing policies adopted in this proceeding (“Spectrum Leasing Policies”) to the Instructional Television Fixed Services (“ITFS”), Multipoint Distribution Service (“MDS”), and Multichannel Multipoint Distribution Service (“MMDS”) (but should permit ITFS licensees to continue existing leases, including any renewals contained therein); and 2) exempt such ITFS leases from as many of the restrictions in Part 74 as possible to achieve parity with other spectrum the Commission is fostering for advanced wireless services.

To “remove unnecessary regulatory barriers to the development of secondary markets in spectrum usage rights,” and to encourage the development of wireless broadband services for all Americans,² the Commission replaced its rigid *Intermountain Microwave*³ *de facto* control standard for interpreting Section 310(d) of the Act. In the context of spectrum leasing, it has

¹ WT Doc. No. 00-230, FCC 03-113, rel. Oct 6, 2003 (“*Further NPRM*”).

² *Id.*, p.1. ¶2 (footnote omitted).

³ *Intermountain Microwave*, 12 FCC 2d 559 (1963).

adopted a new, flexible standard permitting the leasing of cellular, broadband PCS, certain SMR, Wireless Communications Services (“WCS”) and other spectrum⁴ for the provision of advanced wireless services. These licensees may enter into “spectrum manager” leases or *de facto* transfer leases depending on their needs and those of the spectrum lessees.⁵ The Commission has concluded that market forces now should drive markets for advanced wireless services, benefiting consumers and the economy.⁶

Noting the obvious relationship between the Spectrum Leasing Policies and its efforts in WT Docket No. 03-66 to facilitate the use of MMDS/ITFS spectrum for broadband services,⁷ the Commission has asked whether it “should extend the policies developed in this docket to leasing involving ITFS and MDS licensees....”⁸ BellSouth emphatically answers “Yes”.

These proceedings will greatly impact BellSouth’s ability to use its existing WCS, MMDS, and ITFS rights to offer advanced wireless services to consumers throughout the Southeast. By adopting the Coalition Plan⁹ in WT Docket No. 03-66, the Commission will

⁴ 47 C.F.R. §§ 1.9005, 1.9010 (2003).

⁵ *Id.*, §§ 1.9020, 1.9030, 1.9035.

⁶ *Further NPRM*, p. 1, ¶ 2 (“These flexible policies continue our evolution toward greater reliance on the marketplace to expand the scope of available wireless services and devices, leading to more efficient and dynamic use of the important spectrum resources to the ultimate benefit of consumers throughout the country.”)

⁷ *Id.*, p. 108, ¶ 307. BellSouth’s affiliate Cingular Wireless LLC supported the creation of secondary markets for cellular, broadband PCS and other licenses. Comments of Cingular Wireless LLC, WT Doc. No. 00-230, filed Feb. 9, 2001; Reply Comments of Cingular Wireless LLC, WT Doc. No. 00-230, filed Mar. 9, 2001. By comments filed today in this proceeding, Cingular (and BellSouth) urges the Commission to take additional steps to further enhance its Spectrum Leasing Policies. Comments of Cingular Wireless LLC in Response to *Further Notice of Proposed Rulemaking*, WT Doc. No. 00-230, filed Dec. 5, 2003.

⁸ *Further NPRM*, p. 108, ¶ 308. The Commission also asked if it should extend Spectrum Leasing Policies to other spectrum. *Id.*, pp 102-110, ¶¶ 290—312. BellSouth holds Industrial/Business Radio licenses through its wholly-owned affiliate BellSouth Telecommunications Inc. and supports the Commission’s proposal to extend the Spectrum Leasing Policies to permit leasing of such spectrum to commercial providers of wireless services. *Id.*, p. 107, ¶ 304.

⁹ See “A Proposal for Revising the MDS and ITFS Regulatory Regime,” submitted by the Wireless Communications Association International, Inc. (“WCA”), the National ITFS Association and the Catholic Television Network, RM-10586 (filed October 7, 2002) (the “Initial

facilitate the use of MMDS/ITFS spectrum for wireless broadband services under service and technical rules more comparable to those applicable to spectrum used to provide competing services, while continuing to meet the educational needs of ITFS licensees. By applying Spectrum Leasing Policies to MMDS/ITFS spectrum in this proceeding, the Commission will expand the public interest benefits it has concluded will flow from the Spectrum Leasing Policies,¹⁰ and enhance competition among broadband wireless providers by further reducing regulatory disparities created by the various and, in some cases, antiquated licensing schemes.

BellSouth's Interests in Spectrum Leasing: BellSouth acquired MMDS/ITFS and WCS spectrum rights with the intention of competing with cable companies¹¹ and is one of the largest holders of such rights in the Southeast. Having spent millions of dollars to convert existing analog systems to digital video systems and having offered hundreds of channels of high-quality programming to tens of thousands of customers, BellSouth subsequently concluded that it needed to shift its video services strategy in late 2000.¹² Consequently, it began exploring ways to transform its WCS and MMDS/ITFS spectrum to other uses, including advanced wireless services.

This year it conducted tests of base stations and customer premises equipment ("CPE") manufactured by Navini Networks, Inc. using WCS spectrum in Daytona Beach, FL to determine: 1) coverage, capacity and throughput to assess whether this technology can be used economically where technological limitations prevent wired DSL service from being provided;

Coalition Proposal"). The Coalition further supplemented the Initial Coalition Proposal through its Comments (First Supplement) in RM-10586 (filed November 14, 2002), its Reply Comments (filed November 29, 2002) and its Second Supplement (filed February 7, 2003). These filings form the Coalition Plan.

¹⁰ *Further NPRM*, pp. 14-20. ¶¶ 34-45.

¹¹ It holds such rights in AL, FL, GA, KY, LA, MS, NC, SC and TN.

¹² It provides cable service in 14 franchise areas; operates analog wireless video systems in Fort Myers, Miami, Lakeland, Louisville and smaller, rural markets surrounding Atlanta; and has an alliance with DirecTV to offer its residential customers digital satellite television service.

2) the ability of users to “self-install” the CPE; 3) whether such service would be comparable to BellSouth’s wired DSL offering at speeds of up to 1.5 MB/second; and 4) the viability of this technology in a “limited portability” mode. The trial met technical expectations, and participants in the trial reported having a very positive experience.

Encouraged by these results and also by the Commission’s actions in WT Docket No. 03-66, BellSouth now is pursuing further trials in Daytona Beach and is initiating an additional trial in the Atlanta market using both MMDS and WCS frequencies. The Atlanta trials will: 1) test coverage over more difficult terrain; 2) test and improve customer self-installation methods; 3) test various additional traffic loads; and 4) identify (and develop testing methodologies for) possible interference from SDARS transmitters. BellSouth also may conduct trials on ITFS spectrum after assessing the outcomes of these two dockets.

The Benefits of Adopting the Coalition Plan Are Clear: BellSouth noted in WT Docket No. 03-66 that:

the MMDS/ITFS industry is at a turning point, poised to introduce new advanced services to consumers. The Commission can take an important and necessary step in achieving its public policy objectives and fulfilling the promise this spectrum holds by quickly adopting the Coalition Plan....¹³

BellSouth and others have encouraged the Commission to create a regulatory regime that will facilitate the use of MMDS and ITFS spectrum for wireless broadband services and also will create parity with other licensees seeking to offer similar services. Existing rules for leasing ITFS spectrum in Part 74: 1) are complex and cumbersome; 2) reflect the more restrictive *de facto* control standard used by the Commission at the time of their promulgation; and 3) are based on the higher-powered, broadcast model which, *inter alia*, requires site-by-site applications rather than area-wide applications more common to and required by wireless systems employing numerous lower-powered base stations and low powered CPE.

By adopting the Coalition Plan, the Commission will transform the MMDS/ITFS spectrum into state-of-the-art systems capable of providing advanced wireless services, including wireless broadband services, while still granting ITFS licensees the flexibility to offer educational services. Moreover, it will move toward greater regulatory and competitive parity among the spectrum bands that the Commission is fostering for advanced wireless services.

With these goals in mind, BellSouth has:

- Supported efforts to create and adopt rules that would permit flexible, two-way use of the spectrum. For instance, it filed Comments, Reply Comments and petitions for reconsideration in the proceeding that first authorized two-way services;¹⁴
- Participated in the proceeding that permitted mobile operations on MMDS and ITFS spectrum;¹⁵ and
- As a member of the WCA, made substantive contributions to the Coalition Plan, and wrote separately to support adoption of the *NPRM*.¹⁶

For the same reasons, BellSouth has urged the Commission to: 1) adopt geographic area licensing for MMDS and ITFS and to streamline application processing, using ULS forms, and to harmonize the processing with other wireless services; 2) permit DSL providers to hold MMDS and ITFS spectrum rights; 3) prohibit the unlicensed use of MMDS and ITFS spectrum; and 4) relax its construction and service rules for these services.¹⁷

Finally, BellSouth was:

¹³ Comments of BellSouth Corp. and BellSouth Wireless Cable, Inc., WT Doc. No. 03-66, filed Sept. 8, 2003, p.5 (“BellSouth Rebanding Comments”).

¹⁴ Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Two-Way Transmissions, 13 FCC Rcd 19112 (1998), *recon.*, 14 FCC Rcd 12764 (1999), *further recon.*, 15 FCC Rcd 14566 (2000).

¹⁵ Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, 16 FCC Rcd 17222 (2001).

¹⁶ E.g., letter from Karen B. Possner of BellSouth Corp. to Thomas L. Sugrue, Chief, Wireless Telecommunications Bureau, dated Oct. 10, 2002, and Comments of BellSouth Corporation and BellSouth Wireless Cable, Inc., RM-10586, dated Nov. 14, 2002.

¹⁷ BellSouth Rebanding Comments, pp. 10-33.

persuaded by arguments that affording ITFS licensees the right to sell their licenses to commercial entities would be consistent with the public interest and would afford additional flexibility for both ITFS licensees and operators seeking to develop new services to obtain meaningful benefits, without undermining the educational purpose of the ITFS service. Significantly, the decision to sell would be purely voluntary. Those ITFS licensees that choose to keep their licenses – or a portion of their licensed spectrum – could continue to do so with no change and without affecting the operations of other ITFS stations. Those ITFS licensees that choose to sell their licenses could realize negotiated benefits, such as cash consideration to fund other educational services, migration to other distribution systems and access to airtime for educational purposes, all in support of their overall educational mission.¹⁸

The Commission Will Further Its Goal of Creating More Robust Competitive Wireless Services Markets by Applying Spectrum Leasing Policies to MMDS/ITFS:

BellSouth urges the Commission to take the next step of creating parity among the spectrum bands designated for advanced wireless services and asks the Commission to apply the flexible, new *de facto control* standard of the Spectrum Leasing Policies to MMDS/ITFS licenses. Further, it should permit existing ITFS licensees to continue operating under their existing leases, including any renewals thereunder.

Applying the Spectrum Leasing Policies to MMDS/ITFS spectrum clearly is consistent with the Commission's ongoing policy of simplifying its rules and applying the same rules to similarly used spectrum. It also would serve the public interest by reducing the existing regulatory disparities among various frequency bands that will be used to provide advanced wireless services.

As demonstrated in greater detail in the Comments filed by the Wireless Communications Association International, Inc. ("WCA"),¹⁹ if MMDS/ITFS spectrum is to be used to provide advanced wireless services, it will have to be deployed quickly in highly cellularized networks with many more sites than were contemplated by the Commission when it promulgated Part 74

¹⁸ Reply Comments of BellSouth Corp. and BellSouth Wireless Cable, Inc., WT Doc. No. 03-66, filed Oct. 23, 2003 ("BellSouth Rebanding Reply Comments"), p. 29 (footnotes omitted).

of its Rules. WCA also demonstrates that employing the secondary market mechanisms contemplated in the Spectrum Leasing Policies will better encourage the use of currently licensed spectrum, including ITFS/MMDS spectrum, by so-called “opportunistic” technologies or “smart” devices, than unsupervised unlicensed use of such spectrum would achieve.²⁰

BellSouth sees several other direct and immediate benefits flowing from applying Spectrum Leasing Policies to MMDS/ITFS spectrum. First, it would be easier for BellSouth and other similarly situated licensees to design and initiate trials and/or enter into innovative relationships with manufacturers or other firms that might want to offer advanced wireless services in areas BellSouth or other licensees might not find economical to serve. Second, it would make it easier to allocate responsibilities and costs with such trials and relationships. Third, as BellSouth does not have unlimited resources, it would allow BellSouth to conduct more trials or expand into more areas. Fourth, it would simplify trials where BellSouth wishes to test MMDS (or ITFS) spectrum with its WCS spectrum. Having to design separate trials for WCS and MMDS obviously would be impractical. BellSouth’s experience has shown that potential trial partners and/or lessees often are reluctant to subject themselves to the level of control required by the traditional *Intermountain Microwave* standard.

It also would permit BellSouth and others to lower the costs of administering leases. The current *Intermountain Microwave* standard applicable to MMDS requires licensees to actively maintain more control than required under either Spectrum Leasing Policies options. As a result, it is more cumbersome, costly and difficult to conduct trials with third parties or to let them use spectrum. It also is less attractive and more costly to the third party to have so little control of the spectrum.

¹⁹ Comments of the Wireless Communications Association International, Inc., WT Doc. No. 00-230, filed Dec. 5, 2003.

²⁰ *Id.*

Moreover, the Spectrum Leasing Policies' standards of control are clearer and consequently should reduce disputes among the parties under either a spectrum manager lease or a *de facto* transfer lease arrangement. By lowering the costs of leasing and allowing parties to better allocate risks of non-compliance, the Spectrum Leasing Policies will allow the parties to better allocate the economic values of a lease.

Further, applying the same transfer of control standard to MMDS as already applies to WCS, cellular and broadband PCS will allow BellSouth and others to simplify their personnel training and develop uniform contracts for similarly used spectrum. This will lower their costs and increase compliance. It would also give BellSouth the chance to further lower its costs by employing other entities familiar with the Spectrum Leasing Policies—*e.g.*, its affiliate Cingular—to administer its MMDS lease portfolio.

As noted above, BellSouth has supported those parties who have asked the Commission to allow ITFS licensees to choose whether to sell their spectrum to commercial interests. Consistent with that view, ITFS licensees clearly would benefit from the option, but **not the obligation**, to lease spectrum under the Spectrum Leasing Policies. If an ITFS licensee wishes to continue a lease under current rules, however, the Commission should permit it to do so, including allowing any renewals under that existing lease.

BellSouth has had extensive experience in negotiating ITFS/MMDS leases and has first hand evidence regarding the limitations, difficulties, and complexities of leasing ITFS spectrum under the Commission's rules and the *Intermountain Microwave* standard. It took more than 18 months to negotiate more than 60 leases covering 70 ITFS/MMDS licenses. Based on that experience, BellSouth believes that negotiations to use ITFS spectrum will proceed more quickly and create more value for the ITFS licensees (and the spectrum lessees), which then would allow ITFS licensees to more efficiently generate revenue to support their key educational mission than

would be the case under the continued application of the existing *Intermountain Microwave* standard.

While current leasing procedures under Part 74 may have some similarities to the spectrum manager concept, as noted above, Spectrum Leasing Policies substantially lessen the degree of control a licensee must maintain over the day-to-day operation of the lessee and provide significantly clearer delineations of the rights and obligations of the licensee as well as the spectrum lessee. The clarity created by the spectrum manager concept will benefit ITFS licensees by speeding up negotiations, by reducing their on-going costs of administering the leases and overseeing the lessees, and reducing risk of litigation over control issues.

Similarly, the *de facto* transfer lease option offers an ITFS licensee the additional benefit of relieving itself of some of the responsibility for operations and oversight contemplated under the *Intermountain Microwave*. For ITFS licensees, this may be particularly attractive because it is likely to lower their costs while permitting them to retain ultimate ownership of the spectrum.

Leasing ITFS Spectrum Free From Burdensome Restrictions and Unnecessary Obligations Will Serve the Public Interest. It is likely that after the Commission establishes new rules for MMDS and ITFS spectrum in WT Docket No. 03-66, BellSouth will need to negotiate new ITFS leases in order to optimize its use of that spectrum for advanced wireless services. To achieve competitive parity with other spectrum lessors, BellSouth urges the Commission to eliminate as many of the existing limitations and conditions of Part 74 as possible from ITFS licensees in WT Docket No. 03-66 and to reflect that result in this proceeding, as well.

Questions have been raised in WT Docket No. 03-66 regarding what obligations ITFS licensees should retain under Part 74. For example, IMWED asked the Commission to establish a 25 percent minimum educational capacity requirement on ITFS licenses for data services and to require ITFS licensees to retain the right to recapture additional capacity for educational

purposes.²¹ Without repeating its filings in WT Docket No. 03-66, BellSouth demonstrated that such requirements will not serve the public interest and should not be adopted in that proceeding.²² In this proceeding, the Commission should make it clear that ITFS licensees may lease their spectrum to commercial interests free of such obligations under the Spectrum Leasing Policies.

Conclusion: To further its efforts to transform MMDS and ITFS spectrum for advanced wireless services, which the Commission has already found to serve the public interest, the Commission should 1) apply the Spectrum Leasing Policies to ITFS and MMDS spectrum, allowing ITFS licensees to continue existing leases, including contemplated renewals, if they so desire; and 2) permit leasing of ITFS spectrum free from as many Part 74 obligations and restrictions as possible to achieve regulatory and competitive parity among the spectrum bands used to provide advanced wireless services.

Respectfully submitted by:

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December 5, 2003

²¹ Comments of IMWED, WT Doc. No. 03-66, filed Sept. 3, 2003, pp. 8-9.

²² BellSouth Rebanding Reply Comments, pp. 25-27.

CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of December 2003 served the parties of record to this action with a copy of the foregoing **COMMENTS OF BELL SOUTH CORPORATION AND BELL SOUTH WIRELESS CABLE, INC.** by electronic filing addressed to the parties listed below:

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